

of memory and superelasticity. The Examiner has never addressed in any Office Action applicants' arguments, which are set forth below, with regard to the deficiency of the prior art. Applicants respectfully request the Examiner to point out in the Mobley et al., Fischell and Chastagner references [where the teachings are of memory metal tubes programmed for an effect selected from the group of effects consisting of memory effect and superelasticity.]

With respect to the references, first, the Chastagner reference does not have a memory metal tube programmed for memory effect or for superelasticity as required in claim 1. Furthermore, Chastagner does not disclose that the memory metal tube is slotted and capable of expansion and contraction. The device in the Chastagner reference has no slots, and does not contain a memory metal tube. In fact the device in Chastagner operates by virtue of differential heating of expansion elements located in the tip of the device which are heated by fiber optic bundles. By heating one element more than the others, that element will expand differently and the tip of the catheter will bend away from the elements heated to the greatest extent. No such structure or mode of operation is found in the present invention and the recitations noted above found in claim 1 are not found in Chastagner.

The Mobley et al. reference is directed to a catheter device which has a flexible outer tubular member with flexible expansion prongs. The Mobley et al. patent states that the catheter is made of a flexible material such as Silastic, which is a Teflon polymer, but that other materials such as the silicones and the like can be used. See column 3, lines 58-64. Thus clearly Mobley et al. does not anticipate the claims in the present application which call for a slotted tube of a memory metal material and which are programmed for either memory effect or

superelasticity. Since there is no disclosure of a memory metal tubular member in Mobley et al. it is respectfully submitted that it is not properly applied as a §102 reference.

Lastly, the Examiner relies upon Fischell et al. in rejecting claims 1-6. Here again, the Fischell et al. reference is deficient in that it does not disclose an instrument having a slotted memory metal tube programmed for memory effect or superelasticity. There is simply no teaching or suggestion in Fischell et al. of these features recited in independent claim 1 and therefore Fischell et al. is deficient as a §102 reference.

The foregoing arguments have previously been made in this application; however, thereafter the claims were canceled to pursue and prosecute to allowance and issuance other claims in the original application. Therefore, the Examiner has never actually responded to the foregoing arguments by way of pointing out where in the cited references the various teachings are found. Specifically, applicants request the Examiner to point out where the teaching of metal memory tubes is in all of the cited references, as it is applicants' reading of the references that there are no such teachings.

In view of the foregoing, applicants respectfully request either a subsequent, non-final Action addressing the foregoing arguments, or a Notice of Allowance should the Examiner find the foregoing arguments persuasive. In any event, the undersigned would be available to discuss any formal matters that are present in this application if doing so would

advance prosecution. In this regard, the Examiner is encouraged to telephone the undersigned to discuss and resolve any such issues.

Respectfully submitted,

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